Circuit Court for Baltimore City
Case No.: 120069012

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 965

September Term, 2023

MARTIN BROOKS

v.

STATE OF MARYLAND

Wells, C.J.,
Beachley,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 1, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A grand jury in the Circuit Court for Baltimore City indicted appellant Martin Brooks for first-degree murder and related counts. After his motion to suppress was denied, a jury convicted Brooks of second-degree murder, robbery with a dangerous weapon, felony murder, use of a firearm in the commission of a crime of violence, wearing, carrying and transporting a handgun, and possession of a firearm after a disqualifying conviction. The court sentenced him to life imprisonment for felony murder, followed by fifteen years consecutive for possession of a firearm after a disqualifying conviction, the first five years without parole, followed by twenty years consecutive for use of a firearm in the commission of a crime of violence, the first five years without parole. Brooks timely appealed and asks us to address three issues, which we have consolidated into the following two questions:

> 1. Did the trial court commit reversible error by denying a motion for mistrial and giving improper deliberation instructions?
>
> 2. Did the motions court err by denying Brooks' motion to suppress?

For the following reasons, we shall affirm.[1]

[1] Brooks' original three questions were as follows:

> 1. Did the trial court commit reversible error by denying a motion for mistrial and giving improper deliberation instructions?
>
> 2. Did the motions court err by denying Mr. Brooks' motion to suppress the evidence?
>
> 3. Did the motions court err in denying the motion to suppress because the warrant lacked probable cause?

BACKGROUND

On December 22, 2019, at around 5:37 p.m., a masked man wearing all black clothing and a pair of distinctive New Balance sneakers entered Kim's Deli, located at 157 North Kenwood Avenue in Baltimore City, robbed one of the owners, Carmen Rodriguez, of all the cash in the register, shot her in the face with a handgun as her four children stood nearby, resulting in her death. The assailant, later identified as Brooks, fled with an accomplice, later identified as Terrance Peterson, who was parked one block away in a black Honda Accord. Video surveillance of the shooting, as well as the surrounding area where the Honda was parked, was collected and admitted into evidence at Brooks' trial. The police seized New Balance shoes and dark clothing from Brooks' residence. The police also found a loaded semiautomatic .45 caliber handgun connected to ballistics evidence found at the deli in Brooks' car.

Pertinent to the issues on appeal, a portion of video footage from Kim's Deli showing the shooting, as well as a flyer containing a photo of the suspect, were released to the public. As depicted in video surveillance outside the deli, two men, whom matched the descriptions of Brooks and Peterson, parked a black Honda Accord around the corner from the deli before the shooting. The driver then went into the store and, as evident on the in-store surveillance, remained for a few moments before returning to the Honda. At that point, the passenger, believed to be Brooks, got out of the car and walked towards the deli. Less than two minutes later, that man returned to the vehicle, and the vehicle fled the scene. Police responded shortly thereafter.

After receiving numerous tips, and after the surveillance was released to the public Peterson turned himself into the police shortly thereafter. Around the same time, the police also received a tip about Brooks. Police also learned that Peterson was using a black Honda Accord, on loan from CarMax, and similar to the one seen outside the deli at the time of the shooting. Police then examined phone records for Peterson and Brooks and determined that their cellphones were in the vicinity of the crime scene at around the same time as the shooting.

Further investigation led police to an address associated with Brooks on Ridgehill Avenue. After covert surveillance confirmed this association, the police obtained a search warrant for 2024 Ridgehill Avenue and executed it on February 14, 2020. That warrant is not at issue. Instead, Brooks' second question presented concerns a separate search warrant issued for a Ford Taurus, registered in Brooks' name, which was towed from the residence during execution of the first search warrant. The Taurus was towed based on several facts, including, but not limited to, the police observing Brooks entering and exiting the Taurus and placing unidentified objects inside it. The affiant on the vehicle search warrant noted that individuals suspected in murder investigations may hide their weapons used in the crime inside their vehicles.

When the warrant was executed on the Ford Taurus, a loaded handgun, a Llama model Minimax .45 caliber semiautomatic pistol, was found in the car's trunk. A firearms expert testified that based upon ballistics evidence, a cartridge casing recovered from the scene of the shooting was fired from this same handgun.

We shall include additional detail in the following discussion.

DISCUSSION

I. The Circuit Court Did Not Err in Denying Brooks' Motion for Mistrial.

Brooks first contends the trial court erred by denying his motion for mistrial after the jury twice questioned whether the verdict needed to be unanimous and after Juror Number 1 repeatedly expressed concerns about deliberations. Brooks cites further alleged error in the court's instructions to the jury to continue deliberating. For these reasons, Brooks argues that "the trial court could very well have coerced a guilty verdict."

The State responds that Brooks did not object to any of the court's responses, either to the jury as a whole or Juror Number 1 specifically, until the morning of the final day of deliberations. The State continues that, to the extent preserved, the trial court correctly exercised its discretion in denying the mistrial, responding to Juror Number 1's communications, and instructing the jury.

The following chronology of the jury deliberations is helpful to understanding why the court did not err, as Brooks maintains. We sometimes quote at length from the proceedings to better understand the events as they unfolded.

Timeline – Deliberations – Jury Notes and Discussions

Day 1 (Wednesday, February 22, 2023 – Day 5 of Trial)

4:15 p.m.—Juror Number 5 asked, "Do we need to be unanimous on all charges, or can we have agreement on all but one charge." This note was discussed in open court.

Afterwards, Brooks' trial counsel, the prosecutor, and the court agreed that the proper response was: "You must agree on all charges," The jury was sent home by 5:00 p.m.

Day 2 (Thursday, February 23, 2023 – Day 6 of Trial)

4:25 p.m.—In addition to other notes about the charges and evidence, the trial court received a note from Juror Number 1, which reads: "I have been really sick w/diahrea [sic] and covid like symptoms for the past few days. I will need to take a covid test as will the rest of my household." The court conferred with both the prosecutor and Brooks' attorney about how to address this development. As they discussed the issue of the sick juror, the jury sent another note indicating that they had seemingly reached a verdict on some but not all of the charges. As the judge and the attorneys were discussing how to address these two issues, the jury sent a third note, essentially stating that they could not stay past 5:00 p.m. The court and the parties discussed these developments as follows:

> [THE COURT]: At this point I don't know that we have a choice other than to bring them back at 5:00, give them their phones and impress upon them the importance of a unanimous verdict and the importance of returning tomorrow if they are physically able.
>
> All right. Counsel, it is 4:57. I am going to let them go the last three minutes and then I'm going to ask you all whether anyone has any objection to my just bringing them out, letting them go for the day. They've already expressed that they can't stay past 5:00.
>
> At that point, if I just impress upon them the absolute importance of everyone being back here if they are even remotely physically able.
>
> [PROSECUTOR]: Yes, Your Honor. The State request[s] that instruction.
>
> THE COURT: I'm also somewhat inclined to ask if there is a positive test that we get a photograph of it? But I don't want to say that to everybody. Maybe we bring --

[PROSECUTOR]: Juror one up.

THE COURT: Individually? Why don't you come up here.

(Counsel approached the bench and the following ensued:)

THE COURT: Can we bring Juror Number 1 up here and just say, you know, please, if --

[DEFENSE COUNSEL]: May I see that?

THE COURT: If you're even remotely able to come back, which is beg you to come back.

[PROSECUTOR]: I would ask that.

THE COURT: Yeah?

[PROSECUTOR]: People don't always understand the importance unless you emphasize it is very important that you come back.

THE COURT: Do you have any problem with bringing Number 1 up here and saying that? Okay. Mr. Clerk, can we bring Juror Number 1 out here and then just tell them -- well, don't tell them anything, just bring Juror Number 1 out and say. We won't be long. Thanks.

Juror Number 1 that was brought out and the following ensued:

(Juror Number 1 approached the bench.)

THE COURT: Okay. The first thing I want to say is how much everyone truly appreciates your service, especially if you haven't been feeling well, it is beyond impressive that you've managed to continue to serve.

JUROR NO. 1: Yeah, I was surprised, because, like, I was not well.

THE COURT: I know. And I realize that you may not be at your best, but if you don't have a positive COVID test, if there is any way you could come back, you know --

JUROR NO. 1: I have a rapid test I can take.

THE COURT: I cannot express enough appreciation for your service, but I also cannot tell you how important it is that we get everybody back.

JUROR NO. 1: Yeah, I know. Because there's no more alternates.

THE COURT: Yeah. If you're at all able to be here, just as human beings and as fellow residents of this city, begging you to come back.

JUROR NO. 1: Yeah.

THE COURT: Okay?

JUROR NO. 1: Right. I have a rapid 15-minute test, so I'll take it and as long as I'm okay.

THE COURT: And as long as you physically -- look, I'm not trying to diminish the importance of like the other things you're suffering either. Like, I get it. And I get that it's been a huge sacrifice, but if you're able, we're just begging you. Okay?

JUROR NO. 1: Yeah.

THE COURT: Thank you. I appreciate it. I will get you guys lunch tomorrow if you're back.

JUROR NO. 1: Hopefully, I will be back. Hopefully, I will be back.

At that point, the trial court excused the jury for the day with instructions that they return the next day to continue deliberations, stating, "But I am just begging each of you to please, please do your very best to be back here ready to go tomorrow." The jury was then excused at 5:05 p.m.

Day 3 (Friday, February 24, 2023 – Day 7 of Trial)

Juror Number 1 did not come to court. After discussions, including Brooks' assertion that he would not agree to go forward with eleven members of the jury, the court and trial counsel agreed that the proper response would be to tell the jury that Juror Number

1 did not appear for health reasons, and as a result, deliberations could not go forward that day as expected. The court impressed upon the jurors the need to reappear on Monday to continue deliberations, hopefully with Juror Number 1 in attendance. [2]

Day 4 (Monday, February 27, 2023 – Day 8 of Trial)

10:00 a.m.—Court convenes. Juror Number 1 arrived. The jury began deliberations but sent a note immediately upon reconvening which stated: "It will be impossible to come to a conclusion." After conferring with counsel and obtaining their consent, the court brought the jury into the courtroom and read them pattern jury instruction 2:01, concerning the jury's duty to deliberate. *See* Maryland State Bar Ass'n, *Maryland Criminal Pattern Jury Instructions* 2:01, at 235 (3d ed. 2024) ("MPJI-Cr"). *See also Nash v. State*, 439 Md. 53, 90-91 (2014) ("The term '*Allen* instruction' is a legal eponym derived from a United States Supreme Court opinion 'approv[ing] the use of an instruction in which the jury was specifically asked to conciliate their differences and reach a verdict.'") (citing *Kelly v. State*, 270 Md. 139, 140 n. 1 (1973), further citing *Allen v. United States*, 164 U.S. 492, 501-02 (1896)).

10:20 a.m.—The court received a new note from Juror Number 1, which read: "I am having serious mental health challenges and struggling with anxiety panic attacks sitting in this jury room. My emotion, health and sanity can't handle this intense unsalvageable situation. It's too much for my emotional health." The court and the parties discussed this note as follows:

[2] The jury was then excused for the weekend, without further objection.

[THE COURT]: I mean, we could bring her out and talk to her and explain to her the importance of continuing deliberations. That if she had concerns about her mental health that she really could have and should have raised them at a time before this.

[DEFENSE COUNSEL]: I would oppose that.

[PROSECUTOR]: I would agree with Your Honor. She certainly had ample opportunity before we got to deliberation to have said something. We still had alternates at that point. We could have replaced her. I mean, as traumatic as this trial is, if she's going to be impacted mentally, or emotionally, you would think that would have happened during the trial watching what happened, watching the pictures and, you know.

THE COURT: Right. When we still had alternates. So, [defense counsel], you said you opposed that.

[DEFENSE COUNSEL]: I oppose bringing her out to voir dire her. It seems to me the note is self-explanatory. It's a strong note. And I, on behalf of the Defendant, am requesting a mistrial.

THE COURT: What's your position on his request for a mistrial?

[PROSECUTOR]: Well, it's the State's position this juror clearly came in here with the intention of not even trying to deliberate. I would say they should continue to deliberate, that we should bring her out here and advise her of the importance -- and that this could have been brought up earlier -- the importance of continuing to deliberate, but I will defer to the Court.

THE COURT: Maybe if we bring her out -- how about this? I'll bring her out, have everybody appear at the bench, have a conversation with her. If it appears that she's willing to continue deliberating, then we're in one place. If she does not, then I'll reconsider your motion for a mistrial.

Juror Number 1 then entered the courtroom and the following ensued:

THE COURT: Juror Number 1, we have received your second note. I do want to note that before we even started this morning, you sent out a note saying it would be impossible to come to a conclusion.

JUROR NO. 1: Yes, because -- well, no, we started. It was after we started, but, like, right away.

THE COURT: Before the door even shut --

JUROR NO. 1: I cannot take this anymore. I really can't. I canceled a therapist appointment and I have a follow-up tomorrow. I mean, I actually have a therapist appointment that I can finally get on Friday. I can't handle it at all.

THE COURT: Okay. First, let me just say, you have -- and we are all mindful that you have given us two weeks of your time. If you had concerns about whether you emotionally could do this, if you had raised them --

JUROR NO. 1: No, no, I did --

THE COURT: No. Stop.

JUROR NO. 1: I'm sorry.

THE COURT: If you had raised them when we still had alternates, we would be in a very different position.

JUROR NO. 1: I had a therapist appointment on Friday that I had to cancel. So, yes, I felt like I could handle it for two weeks. And then that's why I had my therapist appointment, which was canceled because I still had to come. And I didn't come --

THE COURT: But you didn't come.

JUROR NO. 1: Exactly, because I wasn't feeling well. And, so, now -- and I will have a doctor's note tomorrow, that I have my follow-up for my mental health.

THE COURT: But that's tomorrow.

JUROR NO. 1: Yes. And for --

THE COURT: So can't you give us today?

JUROR NO. 1: Yes, I'll give you today.

THE COURT: Okay.

JUROR NO. 1: But I'm just saying, I wanted to tell you, like, yes, you may have today, but --

THE COURT: Here's what I will tell you. We're not going to maybe come back tomorrow. All right? Can you continue deliberating today?

JUROR NO. 1: Yes, yes, yes. Right.

THE COURT: Knowing that today is it.

JUROR NO. 1: Yes. Right.

THE COURT: Okay. We're not going to make you come back. I just wanted to make sure that you were still in a position that you can still continue deliberating.

JUROR NO. 1: Yes.

THE COURT: Right?

JUROR NO. 1: Like, I'll go to lunch, I'll take a walk and I'll be fine during lunch.

THE COURT: Well, I'm getting lunch for you all, so, if you need a break just to go take a walk --

JUROR NO. 1: I'll take a walk.

THE COURT: -- that's all completely fine.

JUROR NO. 1: Yes.

THE COURT: But for right now you're going to continue deliberating?

JUROR NO. 1: Yes. Yes.

THE COURT: Ma'am, thank you.

The discussion concluded at 10:45:11 a.m.

Three hours later, the jury reached a verdict and the court reconvened at 1:40:11 p.m. The jury found Brooks not guilty of first-degree murder and conspiracy to commit

first-degree murder, and guilty of second-degree murder, armed robbery, first-degree felony murder, use of a firearm in the commission of a crime of violence, wearing, carrying, and transporting a handgun on his person, and possessing a firearm after a disqualifying conviction. Then the court polled the jury and hearkened them to their verdict.

A. Preservation

As indicated, the State argues that many of Brooks' claims are unpreserved. Specifically, the State asserts that Brooks did not object to the court's decision to give an *Allen* instruction and did not request a mistrial or voice any other objection until after Juror Number 1 wrote a note at around 10:20 a.m. on the last day of deliberations, expressing concerns about her mental health.

Except where there are certain jurisdictional defects, we will not review an issue "unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a). The purpose of this rule "is to 'prevent[] unfairness and requir[e] that all issues be raised in and decided by the trial court." *Peterson v. State*, 444 Md. 105, 126 (2015) (quoting *Grandison v. State*, 425 Md. 34, 69 (2012)). In *Robinson v. State*, the Maryland Supreme Court explained that the rule "requires an appellant who desires to contest a court's ruling or other error on appeal to have made a *timely* objection at trial. The failure to do so bars the appellant from obtaining review of the claimed error, as a matter of right." 410 Md. 91, 103 (2009) (emphasis added).

The same is true for claims of instructional error. *See* Maryland Rule 4-325(e) ("No party may assign as error the giving or the failure to give an instruction unless the party objects on the record promptly after the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection"); *Alston v. State*, 414 Md. 92, 112 (2010) ("A principal purpose of Rule 4-325(e) 'is to give the trial court an opportunity to correct an inadequate instruction' before the jury begins deliberations") (quoting *Bowman v. State*, 337 Md. 65, 69 (1994)). As has been explained:

> [T]here must be an objection to the instruction; the objection must appear on the record; the objection must be accompanied by a definite statement of the ground for objection unless the ground for objection is apparent from the record and the circumstances must be such that a renewal of the objection after the court instructs the jury would be futile or useless.

Watts v. State, 457 Md. 419, 426 (2018).

We addressed a similar preservation argument in *Dionas v. State*, 199 Md. App. 483, 522-24 (2011), *rev'd on other grounds*, 436 Md. 97 (2013).[3] In this Court, Dionas challenged the trial court's decision to issue *Allen* instructions in response to several jury notes. *Dionas*, 199 Md. App. at 514. Dionas argued the instructions were coercive and the court's remarks amounted to "a clear indication to the holdout juror that it was time to change his or her vote[.]" *Id*. This Court held that Dionas did not preserve his argument to the *Allen* instruction or the court's comments. *Id.* at 515-24. We explained:

[3] The Maryland Supreme Court reversed our decision where we held that any error in limiting cross-examination of a witness's expectation of leniency in exchange for testifying for the State was harmless beyond a reasonable doubt. *Dionas*, 436 Md. at 107, 121.

> As indicated, many of the court's responses to the jury notes were made without objection, and even when there was an objection, it was on a ground other than that raised on appeal. As such, appellant's contention that the instructions given by the court were coercive is not preserved for our review.

Id. at 523-24. *See also Cunningham v. State*, 78 Md. App. 254, 258 (holding that "*Allen*-type" charge affirmed because there was no objection raised, no plain error, and the trial court's initial instructions included a warning of continued deliberations in the case of a hung jury) *aff'd*, 318 Md. 182 (1989); *Johnson v. State*, 67 Md. App. 347, 376-77 (holding that instructions akin to the traditional "*Allen*-type" charge was not preserved where there was no objection and no plain error), *cert. denied*, 307 Md. 260, *cert. denied*, 479 U.S. 993 (1986).

We are persuaded that Brooks failed to preserve an objection to the trial court's decision to issue an *Allen* instruction. Although defense counsel noted the availability of a mistrial when the court considered the instruction, counsel did not request one at that point, nor was there any objection to the court's instruction after the court specifically asked if there one was forthcoming. We also hold that the only issue before us is whether the court erred in denying Brooks's motion for mistrial after receiving Juror Number 1's note expressing concern about her mental health. We turn to the merits of that issue.

B. Merits

"[D]eclaring a mistrial is an extreme remedy not to be ordered lightly." *Nash*, *supra*, 439 Md. at 69. "Appellate review of a decision to deny a mistrial is conducted 'under the abuse of discretion standard.'" *Vaise v. State*, 246 Md. App. 188, 239, *cert. denied*, 471 Md. 86 (2020) (quoting *Nash*, 439 Md. at 66-67). In reviewing a trial court's exercise of

discretion, we consider whether it was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State v. Baker*, 453 Md. 32, 46 (2017) (internal citation and quotations omitted). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594-95 (1989)).

Brooks' contention is that the "trial court here crossed the line" and "singled out a juror who indicated that the jury could not reach a unanimous decision." Further, after Juror Number 1 expressed misgivings about being able to continue, Brooks alleges that "[i]nstead of granting the mistrial," the court impermissibly coerced the jury to reach a verdict. [4]

It is well settled that "[t]he requirement of unanimity is, of course, a constitutional right set forth in Article 21 of the Maryland Declaration of Rights, which states that 'every man hath a right . . . to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty,' and implemented through [Md.] Rule 4-327(a)." *Jones v. State*, 384 Md. 669, 683 (2005). "A jury verdict that is not unanimous is defective and will

[4] We note that defense counsel never specifically raised an issue challenging the unanimity of the verdict, *per se*, nor did he object after the verdict was rendered. Arguably, the failure to object to the verdict on the grounds of lack of unanimity waives the issue on appeal. *Alford v. State*, 202 Md. App. 582, 616 (2011) (concluding that defense counsel did not preserve an appellate issue concerning the failure of one of the jurors to respond when the jury was polled following the verdict). That being said, we shall consider the issue based on counsel's general request for a mistrial because a general objection, absent a specific rule to the contrary, is sufficient "to preserve all grounds of objection which may exist." *Grier v. State*, 351 Md. 241, 250 (1998).

not stand." *Caldwell v. State*, 164 Md. App. 612, 635 (2005). "A verdict is defective for lack of unanimity when it is unclear whether all of the jurors have agreed to it." *Id.* at 636 (citations omitted). "Whether a verdict satisfies the unanimous consent requirement is a . . . mixed question of law and fact, which we review de novo, considering the totality of the circumstances." *Id.* at 643 (citations omitted).

Brooks directs our attention to *Butler v. State*, 392 Md. 169 (2006). In that case, the jury submitted a note stating that it was unable to reach a unanimous verdict. *Id*. at 174. The court responded by allowing the jury to break for the evening. *Id.* at 175. After the jury renewed deliberations the following morning, the court received another jury note stating: "We have one juror who does not trust the police no matter the circumstance." *Butler*, 392 Md. at 176. In response, the trial judge addressed the jury as follows:

> Madam Forelady, ladies and gentlemen we received two notes from you. The first note occasioned lengthy legal research and argument. The second note we're essentially going to ignore. It says we have one juror who does not trust the police no matter the circumstance. Anybody who had felt that way should have said so in voir dire so a challenge could have occurred, *and if anybody deliberates with that spirit* ***now****, I suggest they might be violating their oath.*

Id. at 178 (emphasis in original). Defense counsel objected to the emphasized portion of the instruction. *Id.*

The Maryland Supreme Court held that the statement was coercive, explaining that it "could have led the juror to put aside his or her firmly held opinion and to vote with the majority even if the juror retained his or her prior position in respect to his or her disbelief of the police either in general or in the instant case." *Butler*, 392 Md. at 182. Thus, because

the remarks "could lead to the improper coercing of a juror into acquiescence with a majority," and the Court concluded that "the judge in effect may have compromised the well recognized principle that the credibility of witnesses is entirely within the province of the trier of fact,"reversal was appropriate. *Id.*

Butler also analogized the coercive nature of the judge's remarks to the coercion disapproved of in earlier *Allen*-charge and polling cases. *First*, the Supreme Court of Maryland looked to the *Allen* instruction given in *Burnette v. State*, 280 Md. 88 (1977), that, "[i]f your views are contrary to those of the vast majority you should consider whether your views, which make no impression on the minds of so many equally intelligent jurors, are correct." *Butler*, 392 Md. at 186 (citing *Burnette*, 280 Md. at 99). In concluding that the instruction was coercive, the Court stated:

> It is difficult to imagine a minority juror who would not be placed in some discomfort on hearing this instruction. Criticism runs directly to him, and he might understandably conclude that proper "deference" to the opinions of the majority demands that he abandon his conscientious position.

Burnette, 280 Md. at 100 (emphasis in original). Similarly, the Supreme Court in *Butler* stated:

> It is likewise difficult to imagine that the juror, who either had a general distrust of police officers or a specific distrust of the officers in this case, or both, would not have been 'placed in some discomfort' or consider that the comment might be suggesting that he or she should "abandon his [or her] conscientious position."

Butler, 392 Md. at 186-87. The Court concluded:

> In the case *sub judice* it is possible that the trial judge's remarks improperly influenced the juror in question to put aside his or her views in fear of violating their oath and the unexplained consequences of such a purported

> violation. Furthermore, the judge's attempt to solve the problem created by the alleged juror bias makes it impossible to determine whether the verdicts "were a product of compulsion or represented the requisite unanimity."

Butler, 392 Md. at 188-89. *Butler* concluded that the lone juror could have been coerced because, "[a]lthough it could be argued that the trial judge did not *per se* threaten the hold-out juror with perjury, that was a strongly implied message from the express assertion that such attitude may violate his or her oath." *Id.* at 192.

We are persuaded that, in contrast to the remarks in *Butler*, the trial judge's remarks in this case did not result in an unfair advantage to either party, nor did they indicate that the judge was biased. Moreover, Juror Number 1 clearly and unequivocally stated that she could continue deliberating. We hold that the court properly exercised its discretion in denying Brooks' motion for mistrial in response to the jury note from Juror Number 1.

Finally, although we conclude the issue was not properly preserved, in response to Brooks' argument that the trial court improperly coerced the jury to reach a verdict despite an apparent deadlock , we recognize that "[a] genuinely deadlocked jury is considered the prototypical example of a manifest necessity for a mistrial." *State v. Fennell*, 431 Md. 500, 516 (2013) (quotations and citations omitted). Nevertheless, "[t]he term 'genuinely deadlocked' suggests . . . more than an impasse; it invokes a moment where, if deliberations were to continue, there exists a significant risk that a verdict may result from pressures inherent in the situation rather than the considered judgment of all the jurors." *Id.* at 516-17. Indeed, we have said that "declaring a mistrial when a jury is not hopelessly deadlocked undermines judicial efficiency," and "it is essential that deadlocked jurors be allowed to

continue deliberating when the deadlock may properly be broken, but not when it is likely that the deadlock will be broken by coercion of a holdout juror (or more than one holdout jurors)." *Browne v. State*, 215 Md. App. 51, 73 (2013); *see also Thomas v. State*, 113 Md. App. 1, 8-12 (1996) (observing that the standard for appellate review of a trial judge's decision to allow a jury to continue to deliberate, rather than declare mistrial, is abuse of discretion; noting that "great deference" should be accorded to the judge's determination), *cert. denied*, 345 Md. 237 (1997).

Here, the court received two notes on the first and second days of deliberations, both of which came at the end of the workday. One of them asked, "Do we need to be unanimous on all charges or can we have agreement on all but one charge," and the second asked, "What if we can't reach a conclusion, do we have to stay later than 5 p.m.?" As indicated above, the court discussed the notes and the appropriate response with the attorneys. Neither attorney objected to those responses. The court also received a note from Juror Number 1, at the start of the third day of deliberations, stating "It will be impossible to come to a conclusion." The court gave the *Allen* instruction in response to this note, again, without objection.

Based on this record, we are not persuaded the jury was deadlocked, nor do we conclude that the trial court coerced the jury into reaching a verdict. Instead, it appears that, at least with respect to the first two notes, the jury was simply asking to be released at the end of the day, as the trial court suggested it would usually try to release the jury at 5:00 p.m. Indeed, we observe that after the first note, defense counsel agreed with the trial court

that it was "too early" to reinstruct on the duty to deliberate and that the court's response was sufficient, and then expressly asked that the jury be released early for the day. As for the third note from Juror Number 1, as the State observes, that note appeared to "reflect[] her personal views and not the jury's position," and never "expressed her views about the outcome," only that she was "reluctant to continue deliberating." Furthermore, Juror Number 1 indicated that she could continue deliberating, and the verdict was rendered *four hours* after the jury was reinstructed about the duty to deliberate. This lengh of time undermines Brooks' claim of coercion. Accordingly, to the extent preserved, we hold the issue presented is without merit.

II. There Was Sufficient Probable Cause to Sustain the Search Warrant in this Case.

Brooks next challenges the search and seizure of the Ford Taurus, which was found parked in his driveway when law enforcement executed a federal search warrant on his residence.[5] Specifically, Brooks first asserts: (A) that the towing of the Taurus from the residence to police headquarters was an illegal seizure, because: (1) the seizure did not constitute a valid search incident to arrest; and, (2) any exigency did not justify the seizure. Second, Brooks contends: (B) the search warrant, issued on the same day as the seizure, was not supported by probable cause because (1) there was no nexus between the alleged criminal activity and the vehicle, and (2) the search warrant was stale. Brooks also argues

[5] That federal search warrant is not included in the record on appeal. Notably, there is no claim by either party with respect to the search of Brooks' residence under that warrant.

that: (C) the good faith exception does not salvage the allegedly illegal search and seizure because the warrant was "bare-bones" and lacked any indicia of probable cause such that the search was unreasonable under the Fourth Amendment.

The State responds that: (A) the seizure of the Ford Taurus was lawful under *Carroll v. United States*, 267 U.S. 132 (1925); and, (B) the issuing judge had a substantial basis to find that probable cause justified the search of the Taurus at the police station. As to the latter, the State contends that: (1) the affidavit provides facts which, considered along with the affiant's expertise, provided a "substantial basis to infer the Brooks had hidden the murder weapon in his car," and, (2) probable cause was not stale because, although the affidavit did not specify the dates and times when police made their observations of Brooks after he was identified by a Metro Crime Stoppers tip, the time between the crime and the search was not unreasonable under the circumstances.

At the suppression hearing, defense counsel proffered, without objection, that, on February 14, 2020, Brooks' residence was searched under a federal warrant. While at that residence, Baltimore City Police, working with federal authorities, seized a 2004 gold-colored Ford Taurus legally parked in the driveway. According to the proffer at the hearing, Baltimore City Police transported the Taurus to police headquarters, where it was later searched pursuant to a separate search warrant signed by a judge of the District Court of Maryland for Baltimore City. Defense counsel argued as follows:

> It is our contention that the warrantless seizure of that vehicle was unlawful because there was no probable cause to take the vehicle. And the warrant that Your Honor has, it is a bare-boned probable cause warrant. The only

> reference to probable cause is, and I can almost quote it, experience has shown that murderers often keep their weapons in the car. That's it.

Defense counsel continued, "[t]hey claim that because their experience shows that the weapons are often kept in the trunks of the car, this is two months later. There's an issue of staleness here. Two months later."

In response to the court's questioning, defense counsel conceded there was a search warrant for the car but maintained that it was only obtained after the vehicle was transported to police headquarters. The court then clarified that the police obtained the search warrant on February 14, 2020, the day the house was searched, but it was not executed until February 17, 2020, after it was transported.

At that point, the court reviewed the affidavit in support of the search warrant, which provided details about the incident, including that surveillance video of the robbery and murder was released to the public to help identify the suspect. The affidavit continued:

> Soon after this video footage was released Metro Crime Stopper "tips" began to be reported. One of the tips that were reported stated that the person in the video matches the characteristics of a man known as "Marvin" with a nickname of "Marty" and his mother's name is Sharon Keeling and resides at 2229 McElderry Street. An investigation into this tips revealed that "Marvin" / "Marty" is in fact Martin Brooks (Male/ Black 12/08/80 SID#2063856). A further investigation into Mr. Brooks revealed that he and Terrance Peterson, the person that turned himself in after seeing his image on social media in connection with this homicide investigation and was subsequently charged with murder for the role he played in this homicide, are close friends and meet with one another often. As we continued to look into Mr. Martin it was discovered that he was with Mr. Peterson in the night of the homicide. According to phone records of Mr. Brooks on the night of the murder he traveled with Mr. Peterson from the location where the murder took place to the area where his girlfriend, Ms. Jasmine Marshall, resides 2024 Ridgehill Ave. Surveillance of Mr. Brooks showed Detectives that he also resided at this location. As Detectives surveilled Mr. Brooks he was seen

> going to and from as well as placing objects into a 2004 Ford Taurus with Maryland Registration 2EC7235. A motor vehicle check of this car reveals that it is registered to Mr. Martin Brooks.
>
> On February 14, 2020 Detectives from both the Baltimore City Police Department and the ATF executed a federal search warrant on the home of Jasmine Marshall, 2024 Ridgehill Ave. As Officers approached that the location it was discovered that Mr. Brooks' 2004 Ford Taurus was running. As Officers approached the door of the residence Mr. Brooks was opening the door to go to his awaiting car. The vehicle was secured and towed to the Baltimore City Police Department's Northern District. Through past investigations and trainings this Detective has found that persons that have committed the crime of murder often hide and secure the weapons used in said murders in their vehicles and locations where they frequent. It is for these reasons that this Detective prays for a search warrant for the vehicle identified as **04 Ford Taurus with Maryland tag 2EC7235** to further investigate this homicide by recovering any and all evidence relative to the crime of murder.
>
> At this time, this Detective prays for a search warrant for the vehicle identified as **04 Ford Taurus with Maryland tag 2EC7235** to search for any evidence that could aid in the solving of this homicide.

(Emphasis in original).

The State proffered that the Taurus was towed, and the search was not conducted until February 17, 2020, because "it was locked, and they had to—the person who would give them the key was unavailable until the 17th." The State then agreed with the court that the burden was on Brooks.

Ultimately, the court denied the motion to suppress, ruling as follows:

> Okay. Respectfully, [defense counsel] made some good arguments regarding staleness, but I don't find them to be applicable here. This murder happens in December. The police develop a suspect in Mr. Brooks. They apply for and receive a search warrant on February 14th. There might have been three days before the car was searched, but during that three days, the car was, by all accounts, in the possession of the Baltimore Police Department.

> At this point, and the search warrant and the accompany [sic] Statement of Probable Cause has been entered as Joint Exhibit Number 1 for purposes of the record, I find there to be absolutely nothing to support the argument that that search warrant was not probable cause -- it established probable cause and a District Court Judge so found appropriately.
>
> The police, pursuant to that warrant, searched the car. Whatever was found inside I would deny, respectfully, the Defense's Motion to Suppress the items found in the car.

"When reviewing a trial court's denial of a motion to suppress, we are limited to information in the record of the suppression hearing and consider the facts found by the trial court in the light most favorable to the prevailing party, in this case, the State." *Washington v. State*, 482 Md. 395, 420 (2022) (citing *Trott v. State*, 473 Md. 245, 253-54, *cert. denied*, ___ U.S. ___, 142 S. Ct. 240 (2021)). "We accept facts found by the trial court during the suppression hearing unless clearly erroneous." *Id.* "In contrast, our review of the trial court's application of law to the facts is *de novo*." *Id.* "In the event of a constitutional challenge, we conduct an 'independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.'" *Id.* (cleaned up). *Accord State v. McDonnell*, 484 Md. 56, 78 (2023).

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Supreme Court has often said that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Richardson v. State*, 481 Md. 423, 445 (2022) (*quoting Riley v. California*, 573 U.S. 373, 381-82

(2014), in turn quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). "Evidence obtained in violation of the Fourth Amendment will ordinarily be inadmissible under the exclusionary rule." *Richardson*, 481 Md. at 446 (quoting *Thornton v. State*, 465 Md. 122, 140 (2019)). However, considering the "significant costs" of the exclusionary rule, it is "applicable only . . . where its deterrence benefits outweigh its substantial social costs." *Id.* (quoting *State v. Carter*, 472 Md. 36, 55-56 (2021), in turn quoting *Utah v. Strieff*, 579 U.S. 232, 237 (2016)). Thus, in assessing the reasonableness of the government intrusion against the individual's personal security, *see Trott, supra*, 473 Md. at 255, we apply "a totality of the circumstances analysis, based on the unique facts and circumstances of each case." *State v. McDonnell*, 484 Md. at 80 (citing *Missouri v. McNeely*, 569 U.S. 141, 150 (2013)); *see also State v. Johnson*, 458 Md. 519, 534 (2018) (reaffirming that appellate courts do not "view each fact in isolation," and that the totality of the circumstances test "precludes a 'divide-and-conquer analysis'") (citation omitted).

A. Towing the Ford Taurus to police headquarters was reasonable.

The State argues that the Taurus could be seized and towed under *Carroll*. There, the United States Supreme Court adopted the automobile exception to the warrant requirement. *Carroll*, 267 U.S. at 153. The automobile exception to the warrant requirement states that "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (quotation omitted). In *Maryland v. Dyson*, the Supreme Court further elaborated that "the automobile exception

does not have a separate exigency requirement: If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." 527 U.S. 465, 467 (1999) (quotation omitted).

Probable cause "exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949) (quoting *Carroll, supra*, at 162); M*aryland v. Pringle*, 540 U.S. 366, 370-71 (2003) (some citations omitted); *accord Pacheco v. State*, 465 Md. 311, 324 (2019); *Brown v. State*, 261 Md. App. 83, 94 (2024).

Indeed, although it is meant "to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime," *Brinegar*, 338 U.S. at 176, the probable-cause standard does not set a "high bar" for police. *State v. Johnson*, 458 Md. at 535 (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018) (citation omitted)). While the arresting officer must have something "more than bare suspicion," *Brinegar*, 338 U.S. at 175, he need not have proof sufficient to conclusively establish guilt beyond a reasonable doubt or even by a preponderance of the evidence, *Gates*, 462 U.S. at 235. All that is required is a "fair probability," *id*. at 246, or "substantial chance," *id*. at 243 n.13, of the arrestee's criminal activity. *See Freeman v. State*, 249 Md. App. 269, 301 (2021) ("With respect to the burden of persuasion, moreover, the case law has been careful

to point out that probable cause means *something less* than 'more likely than not.'") (emphasis added, citations omitted).

Several cases inform our analysis. In *Chambers v. Maroney*, 399 U.S. 42 (1970), the Supreme Court examined whether the automobile exception applied when police officers searched a station wagon after moving the station wagon from the scene of arrest to the police station. The Supreme Court held that because the police officers had probable cause to search the station wagon where it had been stopped, the warrantless seizure and subsequent search at the police station did not violate the defendant's right to be free from unreasonable searches and seizures. *Id*. at 52. In its analysis, the Court debated whether the temporary seizure of the car was less intrusive than a warrantless vehicle search. *Id*. at 51-52. The Court ultimately concluded:

> For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.

Id. at 52.

The Supreme Court later reaffirmed the *Chambers* decision in *Cardwell v. Lewis*, 417 U.S. 583 (1974). In *Cardwell*, a couple of months after a murder, law enforcement agents requested that the defendant come to the police station for questioning. *Id*. at 586. The defendant complied and left his car at a public parking lot nearby while agents interviewed him. *Id*. at 587. After arresting the defendant, agents towed the defendant's car to a police impound lot and conducted a warrantless examination of the outside of the

vehicle. *Id*. at 587-88. Relying partly on *Chambers*, the Court held that the agents did not violate the defendant's right to be free from unreasonable searches and seizures. *Id*. at 594-95. The Court reasoned that it made no difference that the defendant's car was seized from a parking lot and that the defendant was not in the vehicle immediately before police seized it, even though in *Chambers* the police seized the station wagon shortly after the robbery while the suspects were still inside of the car. *Id*. The Court reasoned that "[t]he same arguments and considerations of exigency, immobilization on the spot, and posting a guard obtain." *Id*. Therefore, the Court concluded: "We do not think that, because the police impounded the car prior to the examination, which they could have made on the spot, there is a constitutional barrier to the use of the evidence obtained thereby. Under the circumstances of this case, the seizure itself was not unreasonable." *Id*. at 593.

This Court held in *McDonald v. State* that the automobile exception applied when police officers towed and then searched a vehicle. 61 Md. App. 461 (1985). In that attempted murder case, police officers responded to the victim's residence after her daughter reported that she appeared injured after spending an evening with McDonald. While on the scene, the police looked through the windows of McDonald's car and observed items of possible evidentiary value. *Id.* at 466. The vehicle was towed to the police station, impounded, and subsequently searched pursuant to a warrant. *Id*. at 467. Investigators recovered blood evidence and hair samples that appeared to have been ripped from the victim's head inside the car. *Id*. at 467.

Relying on *Chambers* and *Cardwell*, we upheld the trial court's decision to admit evidence recovered from the car. We explained that, "[i]nasmuch as there was probable cause to arrest the [defendant] and probable cause to believe that his car contained evidence of the crime, the police officers' decision to impound the automobile was valid." *Id*. at 469-70 (citation omitted). Whereas the police obtained a search warrant before searching the vehicle, this Court held that "[w]e see no illegality in either the seizure or the search of the appellant's car. Therefore, the fruits of that search were properly admissible at trial." *Id*. at 470.

As set forth in the facts from the affidavit in support of the Baltimore City search warrant for the car, Brooks was identified as being the person depicted on surveillance footage at the scene of the shooting.[6] The affidavit also provides that Terrance Peterson, a close friend of Brooks, turned himself in and was charged with this homicide after the surveillance videos were released to the public. Using phone records, further investigation revealed that, on the night of the murder, Brooks was with Peterson. Afterward, Brooks went to 2024 Ridgehill Avenue, where he resided with his girlfriend. There, police saw Brooks placing items into the Ford Taurus, which was registered in his name. The affiant affirmed in the affidavit that "persons that have committed the crime of murder often hide

[6] Although not admitted at the motions hearing, we note that the surveillance video showing the robbery and murder was admitted at trial. As depicted on those videos, a man wearing a mask, dressed in all black clothing, and apparently holding a handgun, enters the store, leans over the cashier counter, speaks to the victim, and then shoots her before departing.

and secure the weapons used in said murders in their vehicles and locations where they frequent." *See State v. Johnson*, 458 Md. 519, 533-34 (2018) (recognizing "that a police officer may draw inferences based on his own experience in deciding whether probable cause exists") (citations omitted); *accord Freeman v. State*, 249 Md. App. 269, 281 (2021).

Under the totality of these circumstances, we are persuaded that there was probable cause to believe that evidence related to the murder might be found in Brooks' Ford Taurus. As the cases mentioned above instruct, not only could the police have searched the Taurus at the scene, but they could tow the vehicle to police headquarters and search it there. As will be discussed in the section that follows, the fact that police later obtained a search warrant for the Taurus further supports the reasonableness of their actions in this case. We conclude the seizure of the Taurus and the towing to the police station was reasonable under the *Carroll* Doctrine.[7]

B. There was a substantial basis for the poice to obtain the search warrant for the Taurus.

Brooks next challenges the search of the Taurus pursuant to a search warrant. In determining whether probable cause exists, both the issuing judge, as well as a reviewing

[7] Because of our holding, it is unnecessary to address Brooks' arguments under the search incident or exigency exceptions to the warrant requirement. *See Demby v. State*, 444 Md. 45, 51 (2015) ("It is unnecessary to address every argument the parties make in support of their respective sides of the case because, in the end, the question of whether Petitioner was entitled to suppression of the evidence that the police obtained from the cell phone is controlled by application of the good faith doctrine."); *Garner v. Archers Glen Partners, Inc*., 405 Md. 43, 46 (2008) ("[A]n appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided.").

court, are confined to the averments contained within the four corners of the search warrant application. *Sweeney v. State*, 242 Md. App. 160, 185 (2019). Those averments are to be considered under the totality of the circumstances. *Stevenson v. State*, 455 Md. 709, 727 (2017). "We do not conduct a *de novo* inquiry into whether the court order in this case was supported by probable cause, rather we must determine whether the '*issuing judge had a substantial basis* for concluding that the [court order] was supported by probable cause.'" *Whittington v. State*, 474 Md. 1, 31 (2021) (quoting *Patterson v. State*, 401 Md. 76, 89 (2007), in turn citing *Greenstreet v. State*, 392 Md. 652 (2006) (emphasis in *Whittington*)); *accord Tomanek v. State*, 261 Md. App. 694, 713 (2024).

Indeed, "[t]he substantial basis standard involves something less than finding the existence of probable cause and is less demanding than even the familiar 'clearly erroneous' standard by which appellate courts review judicial fact finding in a trial setting." *State v. Coley*, 145 Md. App. 502, 521 (2002) (cleaned up). "[R]eviewing courts must assess affidavits for search warrants in 'a commonsense and realistic fashion,' keeping in mind that they 'are normally drafted by nonlawyers in the midst and haste of a criminal investigation.'" *State v. Faulkner*, 190 Md. App. 37, 47 (2010) (quoting *United States v. Ventresca*, 380 U.S. 102, 108 (1965)). Ultimately:

> [W]e bear in mind not only "the Fourth Amendment's strong preference for searches conducted pursuant to a warrant," *Gates*, 462 U.S. at 236, 103 S.Ct. 2317, but also the Supreme Court's recognition that "[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause," [*United States v. Leon*, 468 U.S. 897, 914 (1984)]. In consideration of both principles, the Supreme Court has "concluded that *the preference for warrants is most appropriately effectuated by according 'great deference' to a magistrate's determination." Id. Thus,*

> *"in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall." Id*. "[S]o long as the magistrate had a 'substantial basis for ... conclud[ing]' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." *Gates*, 462 U.S. at 236, 103 S.Ct. 2317. If that "substantial basis" standard is met, then any court called upon thereafter to review the warrant is required to uphold it.

Stevenson, 455 Md. at 723-24 (some internal citations omitted, emphasis added).

1. Nexus

Brooks contends there was no nexus between the criminal activity and the Ford Taurus. There is a "permitted inference that perpetrators of crimes of violence will likely keep the weapons or other instrumentalities of crime in their homes." *Joppy v. State*, 232 Md. App. 510, 524 (citing *Holmes v. State*, 368 Md. 506, 520 (2002), and discussing *Mills v. State*, 278 Md. 262 (1976) and *State v. Ward*, 350 Md. 372 (1998)), *cert. denied*, 454 Md. 662 (2017). As established in several cases, this principle extends to a suspect's car.

For instance, in *Ward*, 350 Md. at 377–78, the Court held there was a sufficient nexus between a crime and the defendant's car because witnesses identified the defendant as the murderer, the weapon was not on the defendant's person when he was arrested, and the defendant was approached by police less than forty-eight hours after the murder. In *Holmes*, 368 Md. at 517, the Court held that there was a connection between a crime and the defendant because the transaction of drugs observed by the search warrant affiant occurred less than a block from the defendant's home, and the defendant, who had a history of controlled dangerous substance violations, was in and out of his home immediately prior to meeting his customer. The Court concluded that because:

> a particular kind of weapon was used in the crime; there was evidence linking the defendant to the crime; the weapon was of a kind likely to be kept, and not disposed of, by the defendant; when arrested shortly after the crime, the defendant was not in direct possession of the weapon; ergo, it was likely to be found in a place accessible to him-his home or car.

Id. at 521; *see also State v. Johnson*, 208 Md. App. 573, 618 (2012) (reversing the court's grant of a motion to suppress because the court misapplied the substantial basis test and because there was a "deductive inference that evidence would be found in [suspect's] home or automobiles").

Here, the affidavit in support of the warrant provides that, on the night of the murder, Brooks traveled from Kim's Deli to his residence at 2024 Ridgehill Avenue with Peterson. During the investigation, police witnessed Brooks going to and from his Ford Taurus and placing unidentified objects therein. On the day the federal search warrant was executed, Brooks "was opening the door to go to his awaiting car," which was observed with its engine on as police arrived. The affiant, who was experienced in homicide investigations, alleged that, based on past investigations and training, persons suspected of murder often "hide and secure the weapons used in said murders in their vehicles and locations where they frequent." We are persuaded there was a nexus between the crime and the car to support probable cause under the warrant. *See State v. Ward, supra*, 350 Md. at 389 ("Seemingly the instant matter is a classic illustration of the 'doubtful or marginal cases', the resolution of which 'should be largely determined by the preference to be accorded to warrants.'") (cleaned up).

2. Probable cause was not stale under the circumstances.

Brooks also contends the warrant was stale because the crime occurred on December 22, 2019, and the warrant did not issue until February 14, 2020, approximately fifty-four days, or seven weeks and five days, later. Specifically, Brooks argues "[t]he affidavit in this instant case critically lacks any temporal context" and there is little detail of when the surveillance of Brooks occurred. The State responds that it was reasonable to conclude Brooks kept the gun, and that Brooks "was only identified as a suspect after surveillance video was obtained, reviewed, and released to the public, and he was surveilled after his phone records were obtained and his location on the day of the murder mapped."

There is no requirement "that the facts alleged in the application to establish probable cause must result from observations made within any particular time before the issuance of the warrant." *Connelly v. State*, 322 Md. 719, 731 (1991). And, "the failure of the affidavit to state the time of the events relied upon to show probable cause is not conclusive." *Id*. Indeed, "[t]here is no 'bright-line' rule for determining the 'staleness' of probable cause; rather, it depends upon the circumstances of each case, as related in the affidavit for the warrant." *Id*. at 733.

"Factors used to determine staleness include: passage of time, the particular kind of criminal activity involved, the length of the activity, and the nature of the property to be seized." *Patterson v. State*, 401 Md. 76, 93 (2007) (citing *Greenstreet, supra*, 392 Md. at 674-75), *cert. denied*, 552 U.S. 1270 (2008). The general rule is as follows:

> The ultimate criterion in determining the degree of evaporation of probable cause, however, is not case law but reason. The likelihood that the evidence sought is still in place is a function not simply of watch and calendar but of variables that do not punch a clock: the character of the crime (chance encounter in the night or regenerating conspiracy?), of the criminal (nomadic or entrenched?), of the thing to be seized (perishable and easily transferable or of enduring utility to its holder?), of the place to be searched (mere criminal forum of convenience or secure operational base?), etc. The observation of a half-smoked marijuana cigarette in an ashtray at a cocktail party may well be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later. The hare and the tortoise do not disappear at the same rate of speed.

Patterson, 401 Md. at 93 (quoting *Anderson v. State*, 24 Md. App. 128, 172 (1975)).

With respect to the passage of time, Brooks was not identified as being the shooter seen in the surveillance video until after the footage was released to Metro Crime Stoppers. The investigation following that identification led police to Brooks' residence where he kept the Ford Taurus. The total span of time in this murder investigation, where Brooks was not identified until after the release of that surveillance video, was fifty-four days, which we agree was a significant period of time.

But, as for the remaining factors, the warrant sets forth facts from which we glean that this case was a homicide investigation, involving both state and federal authorities, of a one-time robbery and fatal shooting by an unknown, masked assailant of an employee/owner of a convenience store in Baltimore City. The suspect was at-large and was not immediately identifiable by surveillance video footage or any eyewitnesses. Police investigators clearly were interested in finding the identity of the suspect as well as

evidence connected to the crime, with the handgun that was used in the crime being an important piece of that evidence.

Neither the parties nor our own research reveal any Maryland cases directly on point. Generally, this Court has recognized, albeit in a narcotics possession with intent case, that a handgun is not "perishable and easily transferable" and in fact, is "of enduring utility to its holder[.]" *State v. Johnson*, 208 Md. App. 573, 620 (2012) (discussing *Andresen v. State*, 24 Md. App. 128, 172 (1975) (a fraudulent misappropriation case), *cert. denied*, 274 Md. 725 (1975), *aff'd*, 427 U.S. 463 (1976)). We also made this observation about the "enduring utility" of guns in *Gatling v. State*, 38 Md. App. 255 (1977), a case involving a warrantless search of a vehicle. There, four days after a reported armed robbery and shooting, the investigating officers spotted a vehicle that matched the description provided by the victim. *Gatling*, 38 Md. App. at 257. The driver also matched the victim's description of the assailant. *Id.* Gatling was ultimately arrested, and an ensuing search of the vehicle revealed a fully loaded handgun and five bags of heroin under the driver's seat and three additional bullets and an aluminum foil package containing six additional bags of heroin in the glove compartment. *Id.* at 258.

On appeal, we upheld the search under the *Carroll* doctrine. *Id.* at 265. In so doing, we determined that there was ample probable cause that Gatling was connected to the armed robbery, and that this probable cause was not stale, at least as to the gun, based on the fact that Gatling was stopped four days after the crime. *Id.* at 259-64. Although our

analysis depended primarily on a discussion of the staleness of probable cause, we stated the following:

> The accused had used a gun in robbing [the victim] and in the course of the robbery had shot [the victim] twice. A prudent and reasonable man might well have had reasonable cause to believe that the gun was being transported in the automobile, particularly when the officer's pat down revealed no weapon on the accused. An experienced police officer would surely have reason to know that it was not unusual for a robber to carry his gun either in the glove compartment or under the seat of his car. Nor would the expiration of the four days make it likely that the accused had removed the instrumentality of the crime from the vehicle. Applying the tests suggested by [*Andresen, supra*], it is clear that the gun was of enduring utility to its owner, and that the automobile provided the Brooks with a secure operational base for its secretion.

Id. at 264.

We are persuaded that, under the totality of the circumstances, probable cause had not gone stale when the search warrant for Brooks' Ford Taurus issued. There is no requirement that the specific dates of pertinent parts of the police investigation be delineated in an affidavit. And, under the circumstances, given that this was an ongoing investigation by federal and state authorities of an unidentified, masked suspect, requiring release of surveillance video to Metro Crime Stoppers, a fifty-four-day delay until the suspect could be identified was not unreasonable. Moreover, consistent with Maryland appellate cases, and with a number of other courts, we agree that a handgun is an item of "enduring utility" and was likely to remain in the suspect's possession, either on his person, his house or, in this case, his car.

We are persuaded there was a substantial basis for the motions judge to uphold the decision of the issuing judge to issue the search warrant for the Ford Taurus. In sum, under

the circumstances, there was a substantial basis both to find a nexus between the crime and the car and to find that probable cause was not stale.

C. There was a good faith basis to support execution of the warrant.

Even if we were to conclude there was no substantial basis to find probable cause in this case, the State asserts that the search and seizure of the Ford Taurus was reasonable under the good faith doctrine. Brooks disagrees, maintaining that there was no probable cause to support the search warrant in the first instance.

Generally, evidence obtained in violation of the Fourth Amendment is excluded, however, there are exceptions to the general rule. One of those exceptions is the good faith doctrine. *United States v. Leon*, 468 U.S. 897 (1984). "Under that doctrine, 'evidence will not be suppressed under the exclusionary rule if the officers who obtained it acted in objectively reasonable reliance on a search warrant.'" *Tomanek v. State*, 261 Md. App. at 720 (quoting *Richardson v. State*, 481 Md. 423, 446 (2022)). This is especially true when the police, as in this case, have applied for and obtained a search warrant from a neutral magistrate and acted within its scope. *U.S. v. Leon*, 468 U.S. at 920. As the U.S. Supreme Court explained:

> In most such cases, there is no police illegality and thus nothing to deter. It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient. "[O]nce the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law." Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.

Id. at 920-21 (cleaned up).

Further, "searches pursuant to a warrant will rarely require any deep inquiry into reasonableness," for "a warrant issued by a magistrate normally suffices to establish" that a law enforcement officer has "acted in good faith in conducting the search." *Id.* at 922 (cleaned up). But the officer's reliance must be objectively reasonable. *Id*. There are four circumstances when reliance would not be reasonable:

> (1) the magistrate was misled by information in an affidavit that the officer knew was false or would have known was false except for the officer's reckless regard for the truth;
>
> (2) the magistrate wholly abandoned his detached and neutral judicial role;
>
> (3) the warrant was based on an affidavit so lacking in probable cause as to render official belief in its existence entirely unreasonable; and
>
> (4) the warrant was so facially deficient, by failing to particularize the place to be searched or the things to be seized, that the executing officers cannot reasonably presume it to be valid.

Tomanek, 261 Md. App. at 720 (quoting *Patterson v. State*, 401 Md. 76, 104 (2007), in turn quoting *U.S. v. Leon*, 468 U.S. at 923).

Brooks directs our attention to the third circumstance, arguing that the warrant lacked probable cause because it: was applied for two months after the crime; provided no information about the surveillance of Brooks; and, because it offered only conclusory statements providing no nexus between the crime and the Ford Taurus. In considering this exception, the court must apply an objective test of a police officer's good faith reliance on the search warrant. *Patterson*, 401 Md. at 106. "This is a less demanding showing than the

'substantial basis' threshold required to prove the existence of probable cause in the first place." *Id.* at 105. That test requires that:

> [O]fficers, exercising professional judgment, could have reasonably believed that the averments of their affidavit related to a present and continuing violation of law, not remote from the date of their affidavit, and that the evidence sought would be likely found at [the place identified in the affidavit]. The affidavit "cannot be so 'bare bones' in nature as to suggest that the issuing judge acted as a 'rubber stamp' in approving the application for the warrant."

Id. at 107 (citations omitted, emphasis added).

The Court explained that "[a] 'bare bones' affidavit is one that contains 'wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause.'" *Id.* (citation omitted). This Court also stated that "[t]he exemption was clearly intended to deal with a purely conclusory statement in a warrant application backed up by no further supporting data." *State v. Jenkins*, 178 Md. App. 156, 202 (2008).

As this Court explained, the exemption "was clearly intended to deal with warrant applications which were nothing beyond mere conclusions and was not intended to deal with fuller warrant applications that turned out, on further legal examination, to be somehow flawed." *Jenkins*, 178 Md. App. at 203-04; *see also Patterson*, 401 Md. at 105 (the application of the good faith exception does not depend upon there being a substantial basis for determining probable cause; if it did, the "exception would be devoid of substance") (citation omitted). Recognizing that the initial determination of probable cause is made by the issuing judge, this Court has explained:

> In applying *Leon*, we must bear in mind the euthanasia of pure reason that would result from holding police officers in the field, usually having no legal education besides the one they ostensibly acquire while on duty, to a higher legal standard than we hold the issuing judge himself, who has legal training and has the benefit of an objective and neutral perspective. It is the judge who possesses the legal acumen to objectively analyze the facts and render a decision as to the constitutionality of a search warrant.

Jenkins, 178 Md. App. at 206 (citation and emphasis omitted); *see also Herbert v. State*, 136 Md. App. 458, 488 (2001) ("Even when the warrant is bad, the mere exercise of having obtained it will salvage all but the rarest and most outrageous of warranted searches.").

The affidavit in this case provided details about the robbery and shooting that took place inside Kim's Deli on December 22, 2019. The suspect was wearing all dark clothing, a mask and gloves, and was armed with a .45 caliber handgun. Surveillance video cameras recorded the entire incident from the moment he entered the store, to when he shot the victim, and then when he fled out the front door. When that surveillance was released to the public, the police received a tip that the suspect matched "the characteristics of a man known as 'Marvin' with a nickname of 'Marty' and his mother's name is Sharon Keeling and resides at 2229 McEldeny Street. An investigation into these tips revealed that 'Marvin' / 'Marty' is in fact Martin Brooks (Male/ Black 12/08/80 SID#2063856)." The investigation also revealed that Brooks was in the company of Peterson on the night in question. Peterson turned himself in to the police after seeing the surveillance on social media and was eventually charged in connection with the homicide.

Following this information, the police obtained and examined Brooks' phone records. Those phone records established that, on the night of the murder, Brooks traveled

with Peterson to 2024 Ridgehill Avenue. Further surveillance of this location revealed that Brooks resided there and that he kept his 2004 Ford Taurus parked nearby. The affidavit specifically provided that Brooks was seen going to and from the Taurus, placing objects inside same.

As part of a joint operation with federal authorities, a federal search warrant was executed on 2024 Ridgehill Avenue on February 14, 2020, approximately 54 days after the robbery and murder. When the search warrant team approached the residence, they saw Brooks' Ford Taurus nearby with its engine running. Brooks soon emerged from the residence and started to opened the door to his awaiting vehicle. The affiant, who had extensive experience as a police officer and had worked on homicide cases before, averred that "persons that have committed the crime of murder often hide and secure the weapons used in said murders in their vehicles and locations where they frequent."

We conclude this was not a "bare bones" affidavit, that its averments were not merely conclusory, but instead provided enough information that an objectively reasonable officer exercising professional judgment could have reasonably believed the affidavit was supported by probable cause and could have relied in good faith on the independent judgment of the issuing judge when executing the warrant for the Ford Taurus. To the extent that there was not a substantial basis to support the issuing judge's decision on the merits, we hold that the executing officers could, indeed, rely in good faith on the warrant itself. The motion was properly denied.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED. APPELLANT TO PAY THE COSTS.